

**RAMON C. FLORES**  
Claimant

**BOONE BROTHERS ROOFING**  
Respondent

**AMERICAN CASUALTY CO. OF READING, PA.**  
Insurance Carrier

On May 25, 2001, claimant cut his left forearm with a knife while working for respondent. Respondent provided medical treatment for claimant's left forearm laceration through St. Luke's Shawnee Mission Medical Group. Dr. Roger A. Thomas saw claimant

for a 1.5 centimeter laceration on claimant's left forearm located over the left radius bone approximately 4 centimeters from the distal end. Dr. Thomas repaired the laceration with four sutures and bandaged the area. Claimant was released to return to work with restrictions of limited left hand lifting to 1 pound; keep wound clean, dry and covered; and change dressing daily.

Claimant returned to Dr. Thomas for a followup treatment of the laceration on June 4, 2001. At that time, claimant denied having any problems with the laceration. But Dr. Thomas found the wound margins not closed. When Dr. Thomas questioned claimant about the wound not being closed, claimant stated, "...he was told that if he had restricted duty that he would lose a bonus, therefore, he felt obligated to do unrestricted duties..."<sup>1</sup> Dr. Thomas opined he felt that was why the laceration had not healed completely. Dr. Thomas applied butterfly closures and closed the wound margins completely. Claimant was returned to work with only restrictions to keep the wound clean, dry and covered.

Claimant returned to see Dr. Thomas on June 12, 2001. Dr. Thomas found claimant with the laceration well healed and the wound margins closed. Claimant had a full range of motion of the wrist and fingers without pain. Dr. Thomas released claimant to work with no restrictions.

At the pre-hearing settlement conference held by the ALJ on November 1, 2001, the parties could not agree on claimant's permanent functional impairment. Thus, the ALJ entered an Order dated November 2, 2001, appointing Dr. Vito J. Carabetta to perform an independent medical evaluation of claimant. The purpose of the evaluation was to assess claimant's permanent functional impairment as a result of his May 25, 2001, work injury.

On January 8, 2002, Dr. Carabetta examined claimant. Dr. Carabetta found claimant with left wrist and hand area pain, tingling and numbness. Claimant gave Dr. Carabetta a history of having fairly extensive swelling in the laceration area. But claimant had not sought any further medical treatment since he was last treated for the laceration on June 12, 2001. He had gone to another physician for an evaluation but not for treatment.

After taking a history from the claimant and conducting a physical examination of the claimant, Dr. Carabetta determined claimant had consistent clinical findings of left carpal tunnel syndrome. He found claimant was not at maximum medical improvement and recommended claimant undergo EMG testing to confirm the carpal tunnel syndrome diagnosis. Dr. Carabetta did not assess claimant with any permanent functional disability because of the probable carpal tunnel syndrome diagnosis.

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<sup>1</sup> P.H. Resp., Ex. A.

At the October 7, 2002, preliminary hearing, claimant had been employed since September 5, 2001, as a mechanic for the Kansas City Star. After claimant's May 25, 2001, laceration, claimant testified he started working for a temporary job agency and was assigned to a computer company checking parts. Claimant gave a very sketchy description of the work tasks he had to perform checking parts. Claimant indicated he was required to only look at the parts and use one arm for taking out bad parts. Claimant also could not remember the last date he worked for the computer company. Claimant also provided a very sketchy and incomplete description of the mechanic job at the Kansas City Star. Claimant indicated he only had to stand and watch while performing that job.

The claimant requests the Board to reverse the ALJ's preliminary hearing order because she failed to give the reason for denying medical treatment. Additionally, the claimant argues the preliminary hearing record proves his present condition and need for medical treatment was related to his May 25, 2001 accident. In contrast, respondent argues the Board is without jurisdiction to review the ALJ's denial of medical treatment. Accordingly, respondent argues claimant's appeal should be dismissed.

Although the ALJ did not provide a specific reason for denying claimant's request for medical treatment, the Board finds the preliminary hearing transcript contains the ALJ's description of a specific issue for decision at the preliminary hearing. The ALJ generally framed the issue as to whether claimant's present condition and need for medical treatment was the result of his May 25, 2001, accident while employed by the respondent or instead was it the result of claimant's activities since the May 25, 2001, accident.<sup>2</sup> The Board finds that issue relates to whether claimant's current condition and need for medical treatment arises out of the May 25, 2001, accident while employed by the respondent. That issue is jurisdictional and grants the Board the authority to review preliminary hearing findings.<sup>3</sup> Moreover, the Board finds the ALJ in denying claimant's request for additional medical treatment, although not specifically stated by the ALJ, found claimant failed to prove his current condition and need for additional medical treatment was related to his May 25, 2001, work-related accident while employed by the respondent.

The Board concludes the ALJ's preliminary hearing Order should be affirmed. At this juncture of the proceeding, the Board finds claimant through his testimony and through the medical records admitted into the preliminary hearing record failed to prove that his current left upper extremity condition and need for further medical treatment are related to his May 25, 2001, accidental injury while employed by respondent.

The claimant also objects to the ALJ including in the preliminary hearing record the claimant's discovery deposition taken on March 28, 2002. The Board finds that is an issue

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<sup>2</sup> P.H. at 3-4.

<sup>3</sup> See K.S.A. 44-534a(a)(2).

which the Board does not have jurisdiction to review from a preliminary hearing Order.<sup>4</sup> Thus, the Board finds claimant's appeal of that issue is dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Board that ALJ Julie A.N. Samples' October 9, 2002, preliminary hearing Order, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2003.

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BOARD MEMBER

cc: C. Albert Herdoiza, Attorney for the Claimant  
Anton C. Andersen, Attorney for Respondent  
Julie A.N. Sample, Administrative Law Judge  
Director, Division of Workers Compensation

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<sup>4</sup> See K.S.A. 44-534a(a)(2).